U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the Federal Register of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.


Paul Piquado,
Assistant Secretary for Import Administration.

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BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE
International Trade Administration
[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People’s Republic of China (PRC). The Department further determines that there have been massive imports of subject merchandise into the United States 90 days before the date of entry for all imports of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials. See Appendix I for a complete description of the scope of this investigation.

Critical Circumstances

In the Preliminary Critical Circumstances Determination,4 the Department concluded that critical circumstances exist with respect to imports of solar cells from the PRC for Wuxi Suntech, Trina Solar, and all other producers or exporters, in accordance with section 703(e)(1) of the Tariff Act of 1930, as amended (Act). Our analysis of the comments submitted by interested parties has not led us to change our findings from the Preliminary Critical Circumstances Determination. For a complete discussion that reflects the Department’s decisions regarding critical circumstances, see the Decision Memorandum. Therefore, in accordance with section 705(a)(2) of the Act, we continue to find that critical circumstances exist with respect to imports from Wuxi Suntech, Trina Solar and all other producers or exporters of solar cells from the PRC, and we will continue to maintain the suspension of liquidation of imports that entered the United States 90 days before the date of publication of the Preliminary Determination, unless the U.S. International Trade Commission (ITC) determines that critical circumstances do not exist.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the same scope arguments and issues that were submitted in the case and rebuttal briefs in this investigation. Petitioner, the GOC, Trina Solar, Wuxi Suntech, Small Steps Solar, Ltd., and SunPower Corporation provided comments on the scope of the investigations and the merchandise that is to be included in the scope.

Scope of Investigation

The merchandise covered by this investigation are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials. See Appendix I for a complete description of the scope of this investigation.

Scope Comments

The scope-related comments submitted by parties in the companion antidumping duty investigation in their case and rebuttal briefs covered the...
the case and rebuttal briefs by parties in this investigation are discussed in the Decision Memorandum, which is hereby adopted by this notice. A list of the subsidy programs and the issues that parties raised and to which we responded in the Decision Memorandum is attached to this notice as Appendix II. The Decision Memorandum is a public document and is on file electronically via IA ACCESS. IA ACCESS is available to registered users at http://iaaccess.trade.gov and in the CRU, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at www.trade.gov/ia/. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Use of Facts Otherwise Available, Including Adverse Inferences

For purposes of this final determination, we have continued to rely on facts available and have continued to apply adverse inferences in accordance with sections 776(a) and (b) of the Act with regard to: (1) Whether the polysilicon producers at issue are “authorities” that provide polysilicon for less than adequate remuneration (LTAR); (2) whether the provision of polysilicon is specific in accordance with section 771(5A) of the Act; (3) whether the land provided to Trina Solar is countervailable; (4) whether the grants discovered during the course of this investigation are countervailable; and (5) the GOC’s provision of electricity for LTAR. In addition, for the purposes of this final determination, we are also applying adverse facts available (AFA) to (1) find the export buyer’s credit program to be used and countervailable, and to determine the countervailing duty (CVD) rate to be applied for the export buyer’s credit program, and (2) determine that certain land provided to Wuxi Suntech is countervailable. A full discussion of our decision to apply AFA is presented in the Decision Memorandum under the section “Use of Facts Otherwise Available and Adverse Inferences.”

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated a rate for each individually investigated producer/exporter of the subject merchandise. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an “all-others” rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the “all others” rate by weight averaging the rates of Trina Solar and Wuxi Suntech, because doing so risks disclosure of proprietary information. Therefore, we have calculated an average rate using other information on the record. Since both Trina Solar and Wuxi Suntech received countervailable export subsidies and the “all others” rate is an average based on the individually investigated exporters and producers, the “all others” rate includes export subsidies.

We determine the total countervailable subsidy rates to be as follows.

<table>
<thead>
<tr>
<th>Company</th>
<th>Subsidy rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Others Rate</td>
<td>15.24 percent ad valorem.</td>
</tr>
</tbody>
</table>

As a result of our Preliminary Critical Circumstances Determination and our Preliminary Determination and pursuant to section 703(e)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries from the PRC which were entered or liquidated for CVD purposes for subject merchandise on or after December 27, 2011, to March 26, 2012. If the ITC determines that material injury, or threat of material injury, exists, but that critical circumstances do not exist, the Department will order the refund of all cash deposits and the cancellation of all security posted from December 27, 2011, to March 26, 2012. If the ITC determines that material injury, or threat of material injury,does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

We will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, exists, but that critical circumstances do not exist, the Department will order the refund of all cash deposits and the cancellation of all security posted from December 27, 2011, to March 26, 2012. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder.
to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: October 9, 2012.

Paul Piquado,
Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

This investigation covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration are crystalline silicon photovoltaic cells produced in a third-country from cells produced in a consumer good.

Appendix II

Decision Memorandum

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Provision of Electricity for LTAR

Export Buyer’s Credits

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6. “Two Free, Three Half” Program for Foreign-Invested Enterprises (FIEs)

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8. Enterprise Income Tax Law, Research and Development (R&D) Program

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3. Sub-Central Government Subsidies for Development of “Famous Brands” and “China World Top Brands”

4. Special Energy Fund (Established by Shandong Province)

5. Funds for Outward Expansion of Industries in Guangdong Province

6. Government Provision of Aluminum for LTAR

7. Income Tax Reductions for Export-Oriented FIEs

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17. Export Credit Subsidy Program: Export Buyer’s Credits

18. Discovered Grants

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Comment 2: Cut-Off Date for Measurement of Subsidies

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Comment 3: Critical Circumstances: Early Knowledge

Comment 4: Critical Circumstances: Other Factors Contributing to Import Surges

Comment 5: Critical Circumstances: The Length of the Base and Comparison Periods

Provision of Goods and Services for LTAR

Comment 6: Whether Polysilicon Producers Are Authorities

Comment 7: Whether Polysilicon Producers Were Entrusted or Directed to Supply Polysilicon to the Solar Cells Industry for LTAR

Comment 8: Specificity of the Provision of Polysilicon for LTAR

Comment 9: Use of an In-Country Benchmark to Measure the Benefit from the Provision of Polysilicon for LTAR

Comment 10: The Department’s Determinations Not to Investigate Aluminum Extrusions and Rolled Glass Provided at LTAR

Comment 11: The Provision of Land to Trina

Comment 12: Use of AFA to Determine an Electricity Benchmark

Preferential Policy Lending

Comment 13: Whether SOCBs Are Authorities

Comment 14: Specificity of Preferential Policy Lending

Comment 15: Use of an In-Country Benchmark to Measure the Benefit from Preferential Policy Lending

* CBP provided notification that HTSUS number 8501.31.8000 should be added to the scope of the investigation, as certain articles under this heading may fall within the scope. See Memorandum from Gene H. Calvert through Mark Hoadley to the File, “ACE Case Reference File Update,” dated May 16, 2012.
Comment 16: Flaws in the Calculation of the External Preferential Policy Lending Benchmark
Comment 17: Creditworthiness of Suntech and Trina

Export Buyer’s Credits
Comment 18: Export Buyer’s Credits
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Comment 22: Whether a Local “Famous Brands” Program Constitutes an Export Subsidy
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Comment 24: “Bonus for Employees from Government” Program

Income Taxes
Comment 25: De Jure Specificity of Four Tax Programs; Whether Four Tax Programs Are Limited to Certain Enterprises or Groups of Enterprises
Comment 26: Whether the Department Should Use the Tax Return Covering POI Sales in Calculating Trina’s Benefit from the HNTE Income Tax Program
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Comment 32: Scope of the Investigation VIII. Recommendation

[FR Doc. 2012–25564 Filed 10–16–12; 8:45 a.m.]
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DEPARTMENT OF COMMERCE
International Trade Administration
[A–570–979]
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce
DATES: Effective Date: October 17, 2012.
SUMMARY: On May 25, 2012, the Department of Commerce (“Department”) published its preliminary determination of sales at less than fair value (“LTFV”), postponement of final determination and affirmative preliminary determination of critical circumstances in the antidumping investigation of crystalline silicon photovoltaic cells, whether or not assembled into modules (“solar cells”), from the People’s Republic of China (“PRC”).

On June 25, 2012, the Department published its Preliminary Determination Correction in this antidumping investigation. The Department invited interested parties to comment on the Preliminary Determination. Based on the Department’s analysis of the comments received, the Department has made changes from the Preliminary Determination. The Department determines that solar cells from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the “Act”). The final dumping margins for this investigation are listed in the “Final Determination” section below.

For further Information Contact:
Jeffrey Pedersen, Krisha Hill, or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769, (202) 482–4037, or (202) 482–4406, respectively.

Supplementary Information:
Background


Between July 9, 2012, and July 26, 2012, Wuxi Suntech, Trina, and Petitioner submitted surrogate value and rebuttal surrogate value comments. On July 24, 2012, and July 23, 2012, respectively, Wuxi Suntech and Trina submitted revised U.S. sales and FOP databases per the Department’s request to provide updated databases reflecting the results of verification.


6 The following separate rate companies jointly submitted a rebuttal brief: Sunemc Hardware & Tools Co., Ltd., Ningbo Etdz Holdings Ltd., LDK Solar Hi-Tech (Nanchang) Co., Ltd., LDK Solar Hi-Tech (Nanchang) Co., Ltd., LDK Solar Hi-Tech